

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

MARCI RUSSELL aka MARCILYN GAYLE  
RUSSELL aka MARCILYN GAYLE FULLER  
468 W. ALAMOS AVENUE #3  
CLOVIS, CA 93612

Respondent.

Case No. 2007-131

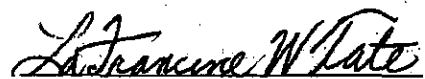
OAH No. N2007030132

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on February 1, 2008.

IT IS SO ORDERED January 3, 2008.



President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

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Respondent.

Case No. 402007131

OAH No. N2007030132

**PROPOSED DECISION**

Gary A. Geren, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 2, 2007, Fresno, California, and on September 6, 2007, in Sacramento, California.

Complainant, the Board of Registered Nursing (Board), was represented by Arthur D. Taggart, Supervising Deputy Attorney General.

Respondent, Marci Russell, was represented by Thornton Davidson, Attorney at Law.

Following the hearing on August 2, 2007, the matter was continued until September 6, 2007, so that testimony from Dr. Dwight Sievert, respondent's psychiatrist, could be received. The matter was thereafter submitted on September 6, 2007.

**FACTUAL FINDINGS**

1. Ruth Ann Terry, M.P.H., R.N., Executive Officer, made the Statement of Issues on behalf of the Board while acting in her official capacity.
2. On February 8, 2006, Marci Russell filed an Application for Licensure by Examination with the Board. On February 21, 2006, the Board received the application.
3. The Board denied respondent's application on May 12, 2006; the basis of the Board's denial of the application was that respondent had a criminal conviction that the

Board contends is substantially related to the qualifications, functions and duties of a registered nurse.

*Respondent's conviction*

4. On May 6, 2002, in the Superior Court, County of Fresno, California, respondent was convicted on her plea of no contest to violating Penal Code section 261.5, subdivision (d), unlawful act of sexual intercourse with a minor under the age of 16 years, a misdemeanor.

5. As a consequence of her conviction, respondent was ordered to serve 28 days in County jail. Respondent was ordered to pay restitution and was placed on informal probation for 36 months. Respondent completed the terms and conditions of her probation without suffering any violations.

6. The circumstances surrounding respondent's conviction were as follows:

On April 18, 2002, respondent, then 32 years old, agreed to drive the 14-year-old son of one of her friends to a church function. She picked the boy up from his residence at approximately 2:30 p.m. Since the function did not start until later that evening, she took the boy to her residence. After arriving at respondent's home, the boy watched a movie on the television, while respondent completed chores around her home.

After the movie ended, respondent approached the boy and asked him to rub her head and her neck, because she had a headache; the boy agreed to do so. Respondent then led the boy into her bedroom. Respondent lay down on her bed and the boy began massaging her neck and head.

As the boy was massaging respondent, he began to make sexual advances toward her. Initially, the boy lifted respondent's shirt, and rubbed her back. The boy undressed respondent, then himself, and the two engaged in consensual sexual intercourse. The police report indicates that the encounter lasted approximately one hour. In the months prior to this date, the boy had made sexual advances towards respondent, which respondent had discouraged. Respondent did not attempt to dissuade the boy's effort to have intercourse with her on this occasion.

After having intercourse, respondent then took the boy to the church function. After respondent dropped the boy off at the event, she began to feel guilty about what had occurred. Respondent, who was undergoing counseling at the time, went to see her counselor, whose office was located nearby. Respondent disclosed to her counselor what had occurred between her and the boy. Her counselor advised her that he was required to report such an incident to the authorities. The counselor encouraged respondent to contact the authorities on her own accord.

Respondent left her counselor's office, and went to the boy's mother's place of employment. Respondent then notified the boy's mother of what had occurred. Thereafter, the two women went to respondent's home. After discussing the matter between themselves, respondent telephoned the police and requested that an officer respond to her residence. An officer did so, and respondent informed the officer about the sexual encounter. The officer then obtained a statement from the boy, and arrested respondent.

Respondent does not dispute that the sexual misconduct with the minor occurred. Respondent agreed that the incident report filed by the police, and entered into the record, substantially details the circumstances surrounding her commission of the crime. Respondent accepts responsibility for her commission of the crime. Respondent's testimony established that this was the only occasion on which she had sex with a minor, and has not seen the boy since the episode took place. Respondent contends that since the occurrence of the incident, she has undertaken steps towards her rehabilitation such that she would not pose a threat to any potential patients that she would be called on to care for while performing her duties as a registered nurse.

### *Rehabilitation*

#### *Factors in mitigation*

7. Respondent was adopted as an infant by a couple who had an adult son living in their home. A cousin of the son was a frequent visitor. Between the ages of two and six, respondent was sexually abused by the two men. Thereafter, respondent was also sexually abused by her adoptive father. Ultimately, Child Protective Services removed respondent from the home when she was 12 years old. Until the time she was emancipated at 17 years old, respondent lived in foster care homes.

Respondent has had a history of emotional problems as a consequence of the abuse she suffered. Respondent's emotional problems led to her being hospitalized in 1999, 2000 and 2001. During this time, respondent was diagnosed as having Bipolar Disorder. Her treatment involved talk therapy and taking mood-stabilizing medication. Since 1999, respondent has been prescribed Lamictal, Lithium, Wellbutrin, Zoloft, Depakote, Effexor and Klonopin. Approximately one year ago, respondent's Bipolar Disorder improved sufficiently that she was able to stop taking medications. She continues to participate in talk therapy.

Historically, respondent's Bipolar Disorder resulted in alternating periods of "depression" and "mania," that has adversely affected her ability to make appropriate decisions. Dr. Sievert testified that during respondent's "manic phases" she has displayed "poor impulse control." Because of respondent's bipolar disorder, she continues to receive Social Security Disability benefits, as her condition was sufficiently grave that it prevented her from gainful employment; however, now respondent would like to discontinue receiving disability benefits and work as a registered nurse.

The problem with respondent's plan is that she is a self-described "recovering sex addict." Respondent attributes her addiction to being sexually abused herself. Prior to receiving counseling, respondent saw herself as "something to be used." Respondent believes that she has recently developed a self-awareness and a measure of self-esteem that enables her to "make appropriate choices" and that she is not likely to engage in inappropriate sexual encounters, like the one involving the boy.

8. Russell Willingham is respondent's pastor; he also counsels individuals with sexual addictions. Mr. Willingham has ministered to individuals with sexual addictions for the last fifteen years and he is a "Certified Christian Sex Addiction Specialist." He has counseled approximately 200 to 300 sex addicts, and he presently conducts 20 to 30 sessions per week. He began counseling respondent in 1997. From 1997 through 2002, he counseled respondent weekly, in one-hour sessions, in what he described as "very intensive rehabilitation."

Mr. Willingham believes that respondent's arrest and conviction was the turning-point in her rehabilitation. He has completed approximately 50 counseling sessions with respondent since the incident involving the boy. Mr. Willingham expressed support for respondent's attempt to become a registered nurse, and he believes that she would not pose a threat to her potential patients. Mr. Willingham's opinion in this regard is tempered by the fact that he has a legitimate and well-intentioned concern for respondent's continued growth. While Mr. Willingham testimony established that he is qualified to testify about sexual addictions generally, and has sufficient insight into respondent's condition specifically, his support for her career advancement was somewhat biased by his personal desire to see respondent succeed because of her hard addressing the "deep scars" left from her past.

9. Testimony and letters of recommendation from respondent's friends, co-workers, nursing instructors, and her fiancée were entered into the record. Each described respondent as a compassionate and caring person. Those who know of respondent's past described her valiant work to address the emotional scars left by the abuse she suffered as a child. Respondent was also described as a conscientious person, prepared to meet the challenges posed by the nursing profession.

10. Respondent successfully completed the educational requirements necessary to become a registered nurse, including a two year internship where she had unsupervised contact with patients. Respondent was able to complete this phase of her training without incident.

11. Respondent has used her conviction as a catalyst for changing her behavior. Respondent has surrounded herself with a network of supportive friends and professionals who help her address her problems. She has made positive steps towards living a more productive, self-reliant life.

*Factors in aggravation*

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12. By committing her crime, respondent violated the trust placed in her by her friend, as well as the moral obligation that an adult owes to a minor in their care. The obligations that respondent owed the boy are analogous to those that a nurse owes to a patient—to protect the safety and integrity of a more vulnerable person entrusted to their care. Respondent's crime involved her inability to constrain her sexual conduct within the bounds of acceptable societal standards. While respondent has but the one criminal conviction, she conceded that her sexual “promiscuity” has been a problem for most of her adult life.

Respondent made bad choices that led to the incident occurring. Because the boy had previously made sexual advances towards her, respondent was well aware of his desires, and therefore, she should not have allowed herself to be alone with the boy in her home, particularly in light of her history of engaging in appropriate sexual relations. Also, respondent initiated the sexual encounter. As a thirty-two year old woman with a history of sexual experiences, respondent was undoubtedly aware that inviting a 14 year old boy to her bed to give her a “massage” would almost certainly lead some form of sexual interaction, particularly given the boys previous advances.

13. Dr. Sievert established that he had “hundreds of sessions” with respondent between 1997 and 2002. Despite receiving a substantial amount of therapy, respondent was unable to control her desire to engage in what she knew to be a crime. Respondent did not share the details of the episode with the boy with Dr. Sievert, and her failure to discuss such a significant issue with her psychiatrist is also troubling.

As recently as 2005, Dr. Sievert believed respondent’s Bipolar Disorder precluded her from engaging in gainful employment and he recommended that she continue to receive disability benefits. He did not visit with respondent between October 2006 and August 2007. In August, Dr. Sievert had an “extensive discussion” with respondent about her ability to handle the stresses and demands placed on a registered nurse. Dr. Sievert told respondent that, “she would need a lot of help” to work as a nurse, and he hoped that her “network of support” would help her to cope with such stresses. Dr. Sievert’s opinion regarding respondent’s ability to cope with the responsibilities and stresses placed on a registered nurse, in light of respondent’s disability was optimistic, but it was not persuasive. The manner, demeanor and attitude conveyed by Dr. Sievert indicated that he harbored reservations about respondent’s ability to meet such challenges at this time.

## LEGAL CONCLUSIONS

### *The Board's authority to deny licensure*

1. Business and Professions Code section 2736, provides that the Board may deny a license when it finds that the applicant has committed any act constituting grounds for denial of licensure under Business and Professions Code section 480.

2 Business and Professions Code section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of section 1203.4 of the Penal Code.

[¶...¶]

(3) Done any act which if done by a licentiate of the business and profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

3. Business and Professions Code, section 2761, states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

[¶...¶]

(f) Conviction of a felony or any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

#### *Rehabilitation*

4. Title 16, California Code of Regulations, section 1445, states:

(a) When considering the denial of a license under Section 480 of the Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider in the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration is grounds for denial which also could be considered as grounds for denial under section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

In addition to the Department's regulations, case law provides guidance in assessing evidence of rehabilitation: Rehabilitation is a "state of mind." The law looks with favor upon one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation; a truer indication of rehabilitation is demonstrated by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.)

### *Discussion*

5. Respondent's crime involved a breach of trust to appropriately care for one entrusted to her care, as such respondent's crime is substantially related to qualifications, duties and functions of a registered nurse. The crime involved sexual misconduct and, until recently, sexual promiscuity was something that respondent has struggled to avoid.

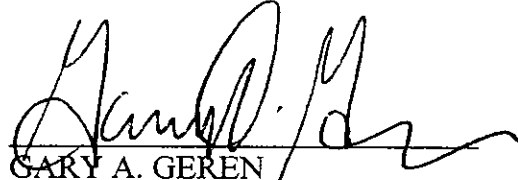
6. When weighing and balancing the evidence contained in the record against the legal factors set forth above, legal cause exists for the Board to deny respondent's application, despite her meaningful and laudable progress towards her rehabilitation.

7. Respondent is encouraged to hold the gains that she has made in this regard; however, until a longer period of law-abiding behavior and rehabilitation has occurred, the Board's outright denial of respondent's application is warranted in order to protect public welfare and safety. (Finding 1-13 and Conclusions 1-6).

ORDER

Respondent's Application for Licensure by Examination with the Board is denied.

DATED: October 9, 2007



GARY A. GEREN  
Administrative Law Judge  
Office of Administrative Hearings

BOARD OF REGISTERED NURSING  
OCT 15 2007

1 BILL LOCKYER, Attorney General  
of the State of California  
2 ARTHUR D. TAGGART, State Bar No. 83047  
Lead Supervising Deputy Attorney General  
3 California Department of Justice  
1300 I Street, Suite 125  
4 P.O. Box 944255  
Sacramento, CA 94244-2550  
5 Telephone: (916) 324-5339  
Facsimile: (916) 327-8643

6 Attorneys for Complainant

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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. 2007-131

13 **MARCI RUSSELL a.k.a.**  
14 **MARCILYN GAYLE RUSSELL a.k.a.**  
15 **MARCILYN GAYLE FULLER**  
468 W. Alamos Avenue, Apt. 3  
Clovis, California 93612

**STATEMENT OF ISSUES**

16 Respondent.

17 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Statement of Issues solely in her official capacity  
20 as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

21 **Application Information**

22 2. On or about February 21, 2006, the Board of Registered Nursing,  
23 Department of Consumer Affairs received an Application for Licensure by Examination from  
24 Marci Russell, also known as Marcilyn Gayle Russell and Marcilyn Gayle Fuller ("Respondent").  
25 On or about February 8, 2006, Marci Russell certified under penalty of perjury to the truthfulness  
26 of all statements, answers, and representations in the application. The Board denied the  
27 application on May 12, 2006.

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4. Code section 480 states:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

**FIRST CAUSE FOR DENIAL OF APPLICATION**

6. Respondent's application is subject to denial under Code sections 480, 490(1) and 2761, subdivision (f), in that on May 6, 2002, in the Superior Court, Fresno, California in the matter entitled *People of the State of California vs. De Russell* (Super Ct. Fresno Cty. 2002, Case No. F02902526-3) Respondent was entered a plea of no contest of violating Penal Code section 261.5, subdivision (d)

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1 (unlawful act of sexual intercourse with a minor under the age of 16 years). Such crime is  
2 substantially related to the qualifications, functions, or duties of a licensed registered nurse.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(Acts Which if Done by a Licentiate Constitute Cause for Discipline)**


5 7. Respondent's application is subject to denial pursuant to Code section  
6 480, subdivision (a)(3), in that Respondent has committed acts, as more particularly set forth in  
7 paragraph 6, above, which if done by a licentiate of the profession would constitute discipline  
8 pursuant to Code section 2761, subdivision (f).

9 **PRAYER**

10 **WHEREFORE**, Complainant requests that a hearing be held on the matters  
11 herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 12 1. Denying the application of Marci Russell, also known as Marcilyn Gayle  
13 Russell and Marcilyn Gayle Fuller for a registered nurse license; and,  
14 2. Taking such other and further action as deemed necessary and proper.

15 DATED: 11/8/06  
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19 RUTH ANN TERRY, M.P.H., R.N.  
20 Executive Officer  
21 Board of Registered Nursing  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant  
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